

CASE

NUMBER:

99.369

INDEX FOR CASE: 99-369
WESTERN KENTUCKY GAS COMPANY
Franchises
CITY OF HORSE CAVE, HART COUNTY, KENTUCKY

IN THE MATTER OF THE APPLICATION OF WESTERN KENTUCKY GAS
COMPANY, A DIVISION OF ATMOS ENERGY CORPORATION, OWENSBORO,
KENTUCKY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY AUTHORIZING IT TO BID ON FRANCHISE ESTABLISHED AND
TO BE OFFERED FOR SALE BY THE CITY OF HORSE CAVE, HART
COUNTY, KENTUCKY

SEQ NBR	ENTRY DATE	REMARKS
0001	09/07/99	Application.
0002	09/09/99	Acknowledgement letter.
0003	09/15/99	FINAL ORDER; GRANTS CERT. OF CONV. & NECESSITY THAT AUTHORIZES BID ON FRANCHISE



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

CERTIFICATE OF SERVICE

RE: Case No. 99-369
WESTERN KENTUCKY GAS COMPANY

I, Stephanie Bell, Secretary of the Public Service Commission, hereby certify that the enclosed attested copy of the Commission's Order in the above case was served upon the following by U.S. Mail on September 15, 1999.

Parties of Record:

William J. Senter
V.P. Rates & Regulatory Affairs
Western Kentucky Gas Company
2401 New Hartford Road
Owensboro, KY. 42303 1312

Honorable Mark R. Hutchinson
Attorney at Law
SHEFFER HUTCHINSON KINNEY
115 East Second Street
Owensboro, KY. 42303

Stephanie J. Bell

Secretary of the Commission

SB/sa
Enclosure

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WESTERN KENTUCKY GAS)
COMPANY, A DIVISION OF ATMOS ENERGY)
CORPORATION, OWENSBORO, KENTUCKY)
FOR A CERTIFICATE OF PUBLIC CONVENIENCE) CASE NO.
AND NECESSITY AUTHORIZING IT TO BID ON) 99-369
FRANCHISE ESTABLISHED AND TO BE)
OFFERED FOR SALE BY THE CITY OF HORSE)
CAVE, HART COUNTY, KENTUCKY)

O R D E R

On September 7, 1999, Western Kentucky Gas Company ("Western") filed with the Commission its application seeking a Certificate of Convenience and Necessity to qualify it to bid on a gas franchise in the city of Horse Cave, Kentucky. Under the provisions of KRS 278.020(3), no utility may apply for a franchise from any governmental agency until it has obtained a Certificate of Convenience and Necessity from this Commission based on our finding that there is a need and demand for the service sought to be rendered.

The Commission determines that there is evidence of a need and demand for gas service in the above-mentioned city. Since the Commission's authority in such matters is limited by statute to finding only whether there is a need and demand for the service sought to be rendered, no finding or determination is made as to the qualifications of the bidder, the validity of any of the provisions of the franchises offered by said city, or the manner in which any franchise fee is to be treated for rate purposes.

IT IS THEREFORE ORDERED that:

1. Western is granted a Certificate of Convenience and Necessity that authorizes it to bid on a gas franchise in the above-mentioned city.

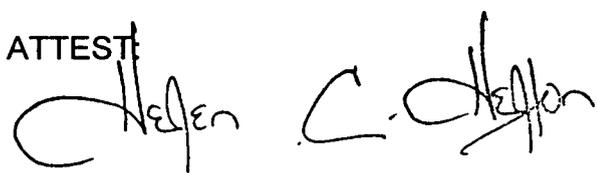
2. Western, if it becomes the successful bidder, shall file with this Commission two copies of the franchise agreement.

3. This Order shall not be construed as granting a Certificate of Convenience and Necessity to construct utility facilities in said city.

Done at Frankfort, Kentucky, this 15th day of September, 1999.

By the Commission

ATTEST:

A handwritten signature in cursive script, appearing to read "Helen C. Callahan". The signature is written in dark ink and is positioned above a horizontal line.

Executive Director



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

September 9, 1999

William J. Senter
V.P. Rates & Regulatory Affairs
Western Kentucky Gas Company
2401 New Hartford Road
Owensboro, KY. 42303 1312

Honorable Mark R. Hutchinson
Attorney at Law
SHEFFER HUTCHINSON KINNEY
115 East Second Street
Owensboro, KY. 42303

RE: Case No. 99-369
WESTERN KENTUCKY GAS COMPANY
(Franchises) CITY OF HORSE CARE, HART COUNTY, KENTUCKY

This letter is to acknowledge receipt of initial application in the above case. The application was date-stamped received September 7, 1999 and has been assigned Case No. 99-369. In all future correspondence or filings in connection with this case, please reference the above case number.

If you need further assistance, please contact my staff at 502/564-3940.

Sincerely,

Stephanie Bell
Secretary of the Commission

SB/jc °

RECEIVED

SEP 07 1999

September 3, 1999
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The Law Firm Of

sheffer·hutchinson·kinney

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ALL OTHERS ADMITTED IN KY ONLY

September 3, 1999

FEDERAL EXPRESS

Kentucky Public Service Commission
720 Schenkel Lane
Frankfort, Kentucky 40601

Attention: Helen Helton, Executive Director

CASE 99-369

RE: Application for Authority to Bid on Franchise for City of Horse Cave

Dear Helen:

I enclose herewith an original, plus ten (10) copies of an Application for Authority to bid on a franchise for the City of Horse Cave by Western Kentucky Gas Company. Please note that our bid must be delivered by no later than 5:00 p.m. on October 11, 1999. It is therefore imperative that we obtain approval from the Commission prior to that time. If that is a problem or if there is a problem with this filing, please advise at once.

Thanking you now for your assistance in this matter.

Very truly yours,

SHEFFER HUTCHINSON KINNEY



Mark R. Hutchinson

RECEIVED

SEP 07 1999

PUBLIC SERVICE
COMMISSION

BEFORE THE
PUBLIC SERVICE COMMISSION
OF KENTUCKY

IN THE MATTER OF:
APPLICATION OF WESTERN KENTUCKY
GAS COMPANY, A DIVISION OF ATMOS
ENERGY CORPORATION, OWENSBORO,
KENTUCKY FOR A CERTIFICATE OF PUBLIC
CONVENIENCE AND NECESSITY AUTHORIZING
IT TO BID ON FRANCHISE ESTABLISHED
AND TO BE OFFERED FOR SALE BY THE CITY
OF HORSE CAVE, HART COUNTY, KENTUCKY

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CASE NO. 99-369

APPLICATION

Mark R. Hutchinson
115 East Second Street
Owensboro, Kentucky 42303

Attorney for Applicant

1

Applicant, Western Kentucky Gas Company (sometimes hereinafter called "Company" or "Applicant") is a division of Atmos Energy Corporation, a Texas and Virginia corporation, duly qualified under the laws of the Commonwealth of Kentucky to carry on its business in the Commonwealth.

The Company is an operating public utility engaged in the business of supplying natural gas to the public in numerous cities, towns, and communities in Western and South Central Kentucky.

2

A certified copy of Applicant's articles of incorporation and all amendments thereto are on file in the records of this Commission. See *In the Matter of Western Kentucky Gas Utility Corporation*, Case #10063.

3

The City of Horse Cave (sometimes hereinafter called the "City") is a municipal corporation situated in Hart County, Kentucky and is in an area presently served by Applicant. Applicant has been the owner of a franchise for the operation of the natural gas system within the City immediately prior to the sale of a new franchise. Applicant is at the present time serving the City and owns and maintains a gas distribution system in such City.

4

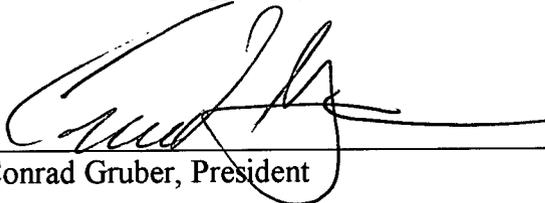
The City Commission of the City has established a natural gas franchise for the City and has directed that bids for the sale thereof be received on or before the 11th day of October, 1999. A copy of the resolution establishing such franchise, directing its sale, and setting forth the type and provisions of such franchise is filed herewith as a part hereof.

There is a demand and need for continued natural gas service for the City.

WHEREFORE, Applicant respectfully requests the Commission to enter a certificate of public convenience and necessity authorizing Applicant to bid on the aforesaid natural gas franchise and, if it is awarded such franchise, to operate the natural gas distribution system pursuant to such franchise. A copy of the franchise, if awarded to Applicant, will be filed with the Commission.

Respectfully submitted,

WESTERN KENTUCKY GAS COMPANY,
a division of Atmos Energy Corporation

By: 
Conrad Gruber, President

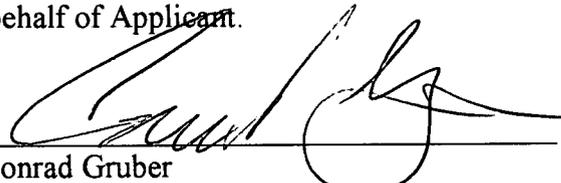
MARK R. HUTCHINSON

By: 
Mark R. Hutchinson
115 East Second Street
Owensboro, Kentucky 42303

Attorney for Applicant

COMMONWEALTH OF KENTUCKY §
 §
COUNTY OF DAVIESS §

The undersigned affiant, Conrad Gruber, being first duly sworn, deposes and says that he is the President of Western Kentucky Gas Company, a division of Atmos Energy Corporation, having its principal office in Owensboro, Kentucky, which is the Applicant in this proceeding; that he has read the foregoing application and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on information or belief, and that as to those matters he believes them to be true; and that he is duly authorized to sign, execute, verify, and file the foregoing application on behalf of Applicant.


Conrad Gruber

SUBSCRIBED AND SWORN to before me by Conrad Gruber this 3rd day of
September, 1999.


Notary Public, State of KY at Large
My Commission Expires: Sept. 26, 2001

ORDINANCE 99-9

AN ORDINANCE OF THE CITY OF HORSE CAVE, KENTUCKY, PROVIDING FOR THE SALE OF THE FRANCHISE AND RIGHT TO ACQUIRE, CONSTRUCT, INSTALL, LAY, OPERATE, MAINTAIN, REPAIR, REMOVE, AND REPLACE A GAS SYSTEM TO BE USED FOR THE SALE, TRANSMISSION, DISTRIBUTION, AND TRANSPORTATION OF NATURAL GAS, ARTIFICIAL GAS, OR MIXTURE OF SUCH GASES TO THE RESIDENTS AND BUSINESSES LOCATED WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY FOR LIGHT, HEAT, POWER, AND OTHER USES AND THE RIGHT TO USE, FOR THE PURPOSES DESCRIBED ABOVE, THE PRESENT AND FUTURE STREET, ROADS, HIGHWAYS, ALLEYS, PUBLIC WAYS, AND REAL PROPERTY LOCATED IN, AND OWNED OR CONTROLLED BY, THE CITY; AND PRESCRIBING THE TERMS AND CONDITIONS FOR THE FRANCHISE AND RIGHTS

BE IT HEREBY ORDAINED by the CITY OF HORSE CAVE, KENTUCKY, (hereinafter referred to as the "City") that the Mayor of the City, or such other person as the Mayor may designate, shall offer for sale, to the highest and best bidder, the non-exclusive franchise and right to acquire, construct, install, lay, operate, maintain, repair, removed, and replace a Gas System (as hereinafter defined) to be used for the sale, transmission, distribution, and transportation of Gas (as hereinafter defined) to the residents and businesses located within the municipal boundaries of the City for light, heat, power, and other uses and the right to use, for the purposes described above, the Public Ways (as hereinafter defined) of the City, subject to the terms and conditions hereinafter set forth.

ARTICLE I
DEFINITIONS

For purposes of this ordinance, the following terms shall have the meanings set forth below:

Section 1.1. Franchisee. The term "Franchisee" shall mean the individual person, corporation, company, partnership, firm, unincorporated association, trustee, or public corporation that is awarded by the City the franchise created by this Ordinance.

Section 1.2. Gas. The term "Gas" shall mean natural gas, artificial gas, and any mixture of such gases.

Section 1.3. Gas System. The term "Gas System" shall mean any and all Pipelines (as hereinafter defined), meters, valves, compressors, anti-corrosion items, facilities, structures, machinery, equipment, and appurtenances of any kind that Franchisee, in its sole discretion, may deem necessary or advisable for the exercise of the franchise and rights granted to Franchisee pursuant to this ordinance.

Gas Franchise

Page two -

Section 1.4. Pipelines. The term "Pipelines" shall mean any and all above-ground and below-ground pipes, including, but not limited to, mains, distribution lines, secondary lines, laterals, and other pipes, that have been, are being, or are intended to be used at any time in, or in connection with, the sale, transmission, distribution, or transportation of Gas within the City.

Section 1.5. Public Ways. The term "Public Ways" shall mean the present and future streets, alleys, avenues, boulevards, lanes, parkways, sidewalks roads, highways, rights-of-way, and other public ways and real property located within the municipal boundaries of the City and owned by, or under the control of, the City.

ARTICLE II TERM

Section 2.1. Term. The term of the franchise and rights created hereby shall be for a period of twenty (20) years, commencing on the later of (i) the date that Franchisee's bid to purchase this franchise accepted by the City or (ii) the expiration of the natural gas franchise held by Western Kentucky Gas Company immediately preceding this franchise.

ARTICLE III OBLIGATIONS OF FRANCHISEE

Section 3.1. No obstruction of Public Property. Franchisee shall not, unnecessarily or for any unreasonable period of time, obstruct or interfere with the public use of any of the Public Ways.

Section 3.2. Repair of Damages. Franchisee shall repair any and all damages caused solely by Franchisee to any of the Public Ways and shall restore, as nearly as practicable, such property to substantially its condition immediately prior to the incident causing such damage. Franchisee shall commence such repairs, immediately upon completion of the work or activity in which Franchisee was involved at the time the damage occurred and shall complete such repairs as promptly as possible.

Section 3.3. Conduct of Work and Activities. Franchisee shall use reasonable care in conducting its work and activities in order to prevent injury to any person and unnecessary damage to any real or personal property.

Gas Franchise
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Section 3.4. Installation of Underground Pipelines. Franchisee shall, when reasonably practicable, install all Pipelines underground at such depth and in such manner so as not to interfere with the existing pavement, curbs, gutters, underground wires or cables, or water or sewer pipes owned or controlled by the City.

ARTICLE IV
GENERAL PROVISIONS

Section 4.1. Removal of Gas System. Franchisee may remove all or part of the Gas System upon the expiration or termination of the franchise and rights granted hereby.

Section 4.2. Force Majeure. Notwithstanding anything expressly or impliedly to the contrary contained herein, in the event Franchisee is prevented, wholly or partially, from complying with any obligation or undertaking contained herein by reason of any event of force majeure, then, while so prevented, compliance with such obligations or undertakings shall be suspended. The terms "force majeure," as used herein, shall mean any cause not reasonably within franchisee's control and includes, but is not limited to, acts of God; strikes; lock-outs; wars; riots; orders or decrees of any lawfully constituted federal, state, or local body; occurrences resulting from or attributable to chronological date changes from the year 1999 to the year 2000; contagions or contaminations hazardous to human life or health; fires; storms floods; wash-outs; explosions; breakages or accidents to machinery or Pipelines; inability to obtain or delay in obtaining rights-of-way, materials, supplies, or labor permits; permanent or temporary failures of gas supply or gas transportation services; or necessary repair, maintenance, or replacement of facilities used in the performance of the obligations contained in this Ordinance. Nothing in this force majeure provision or the operation hereof shall cause or be deemed to cause the term of this franchise to extend beyond twenty (20) years as set forth in Section 2.1.

Section 4.3. Assignment. Franchisee is hereby given the right to assign, without the consent of the City, the franchise created by this Ordinance to any person, firm, or corporation that has received from the Kentucky Public Service Commission any and all required certificates of convenience and necessity for obtaining a franchise.

Section 4.4. Binding Effect. This Ordinance shall extend to, be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

Gas Franchise
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Section 4.5. Repeal of Conflicting Ordinances. All other ordinances of the City or portions thereof that are in conflict or inconsistent with any of the terms or provisions of this Ordinance are hereby repealed to the extent of such conflict or inconsistency.

Section 4.6. Severability. In the event any part of this Ordinance is determined to be invalid or illegal for any reason whatsoever, such invalidity or illegality shall not affect the validity or legality of this Ordinance as a whole or of any other parts hereof.

Section 4.7. Effectiveness of Ordinance. This Ordinance shall be deemed effective upon its publication pursuant to Chapter 424 of the Kentucky Revised Statutes.

Section 4.8. Section and Other Headings. The section and other headings contained in this Ordinance are for reference purposes only and shall not affect in any way the meaning or interpretation of this Ordinance.

ARTICLE V
BID REQUIREMENTS

Section 5.1. Receipt of and Advertisement for Bids. The Mayor, or such other person as the Mayor may designate, shall, after due advertisement, receive bids publicly for the franchise created in this Ordinance. Such bids shall be in writing and shall be delivered to the Mayor or the Mayor's designee by 5:00 P.M. on October 11, 1999 (the "Bid Deadline"). Advertisements for such bids shall be published in a newspaper meeting the qualifications of Section 424.120 of the Kentucky Revised Statutes once a week for three successive weeks, provided that at least one of such publications shall occur not less than seven (7) nor more than 21 days before the Bid Deadline. All costs and expenses for such advertisements shall be borne by Franchisee and shall be paid directly by Franchisee or reimbursed to the City within a reasonable time after the City's acceptance of Franchisee's bid.

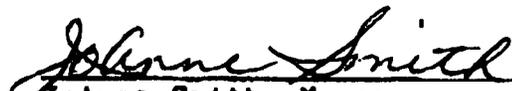
Section 5.2. Consideration of Bids. The Mayor shall present all written bids to the City Council at its first meeting scheduled after the Bid Deadline for the City Council's consideration and approval. The City Council reserves the right to reject any and all bids received and, in such event, to direct, by resolution or ordinance, that the franchise created hereby be offered again for sale until a satisfactory bid is received and approved.

Gas Franchise
Page five -

Section 5.3. Deposit and Bond Requirements. Each bid shall be accompanied by a deposit and bond in compliance with Section 96.020 of the Kentucky Revised Statutes, provided, however, that no deposit or bond shall be required of a bidder that already owns in the City a plant and equipment sufficient to render the service required under this Ordinance.

Read and passed by the City Council of the City of Horse Cave, Kentucky, with a quorum of such council duly and lawfully assembled and voting, on the first (1st) reading, on the 16th day of August, 1999.

CITY OF HORSE CAVE, KENTUCKY

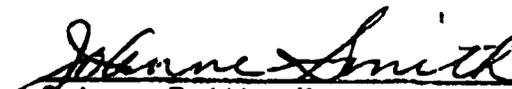

JoAnne Smith, Mayor

ATTEST:


Elizabeth C. Matera, City Clerk

Read and passed by the City Council of the City of Horse Cave, Kentucky, with a quorum of such council duly and lawfully assembled and voting, on the second (2nd) reading, on the 23rd day of August, 1999.

CITY OF HORSE CAVE, KENTUCKY


JoAnne Smith, Mayor

ATTEST:


Elizabeth C. Matera, City Clerk